

## PROFESSIONAL SERVICES AGREEMENT

This Agreement, entered into by and between the Office of the Indiana Attorney General (the "OAG") and Indiana Continuing Legal Education Forum, Inc. ("ICLEF"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

WHEREAS, every attorney admitted to the Bar of the State of Indiana is required to fulfill minimum annual continuing legal education requirements pursuant to Rule 29, Indiana Rules for Admission to the Bar and The Discipline of Attorneys; and

WHEREAS, ICLEF is in the business of offering a variety of continuing legal education courses approved for credit by the Indiana Commission for Continuing Legal Education, which courses are offered for a fee; and

WHEREAS, the OAG employs a number of attorneys and wishes to defray a part of the cost its employees pay for continuing legal education courses; and

WHEREAS, ICLEF wishes to encourage attorneys employed by the OAG to attend its courses;

Now therefore, the parties agree as follows:

- 1. Duties of ICLEF; Consideration.** Subject to the terms and conditions set forth on Exhibit A, attached hereto and incorporated herein, ICLEF will make its continuing legal education courses available to employees of the OAG at the rates set forth on Exhibit A. Total remuneration shall not exceed \$40,000.00.
- 2. Term.** This Agreement shall commence on February 15, 2003 and shall remain in effect for courses offered through December 31, 2004.
- 3. Access to Records.** ICLEF shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. It shall make such materials available at its offices at all reasonable times during this Agreement term, and for three (3) years from the date of final payment under this Agreement, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.
- 4. Audits.** ICLEF acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC 5-11-1, and audit guidelines specified by the State.
- 5. Authority to Bind ICLEF.** Notwithstanding anything in this Agreement to the contrary, the signatory for ICLEF represents that he/she has been duly authorized to execute contracts on behalf of ICLEF and has obtained all necessary or applicable

approvals to make this Agreement fully binding upon ICLEF when his/her signature is affixed, and this Agreement is not subject to further acceptance by ICLEF when accepted by the OAG.

**6. Compliance with Laws.** ICLEF shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, the provisions of which are incorporated by reference. The enactment or amendment of any applicable state or federal statute or the promulgation of any rules or regulations hereunder after execution of this Agreement shall be reviewed by the State and ICLEF to determine whether the provisions of this Agreement require formal modification.

**7. Conflict of Interest.** As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

The individual executing this Agreement;

An individual who has an interest of three percent (3%) or more of ICLEF.

Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

The Department may cancel this Agreement without recourse by ICLEF if any interested party is an employee of the State of Indiana.

The Department will not exercise its right of cancellation under section B above if ICLEF gives the Department an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state employees. The Department may take action, including cancellation of this Agreement consistent with an opinion of the Commission obtained under this section.

ICLEF has an affirmative obligation under this Agreement to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that ICLEF knows or reasonably could know.

**8. Debarment and Suspension.** ICLEF certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of ICLEF.

**9. Default by OAG.** If the OAG, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Agreement, then ICLEF may cancel and terminate this Agreement and collect all monies due up to and including the date of termination.

**10. Disputes.** Should any disputes arise with respect to this Agreement, ICLEF and the OAG agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

ICLEF agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. If the OAG and ICLEF cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to ICLEF and the OAG within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

The OAG may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the OAG to ICLEF of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for ICLEF to terminate this Agreement, and ICLEF may bring suit to collect these amounts without following the disputes procedure contained herein.

**11. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**12. Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**13. Independent Contractor.** Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners,

joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, or employees of the other party.

**14. Licensing Standards.** The parties agree that ICLEF and its employees and agents shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by ICLEF pursuant to this Agreement. The OAG shall not be required to reimburse ICLEF for any services performed when ICLEF or its employees or agents that are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, ICLEF shall notify the OAG immediately and the OAG, at its option, may immediately terminate this Agreement.

**15. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, ICLEF shall not discriminate against any employee or applicant for employment in the performance of this Agreement. ICLEF shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement. ICLEF's execution of this Agreement also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

**16. Notice to Parties.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised.

Notices to the OAG shall be sent to:

Office of the Attorney General  
Attn: HR Training Coordinator  
302 West Washington Street  
Indianapolis, IN 46204

Notices and payments to ICLEF shall be sent to:

Indiana Continuing Legal Education Forum  
Attn: President  
230 East Ohio Street, Suite 300  
Indianapolis, IN 46204

**17. Payments.** All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures.

**18. Penalties/Interest/Attorney's Fees.** The OAG will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, or IC 34-13-1.

**19. Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

**20. Taxes.** The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on ICLEF as a result of this Agreement.

**21. Termination for Convenience.** This Agreement may be terminated, in whole or in part, by the OAG whenever, for any reason, the OAG determines that such termination is in its best interest or the best interest of the State of Indiana. Termination of services shall be effected by delivery to ICLEF of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. ICLEF shall be compensated for services properly rendered prior to the effective date of termination. The OAG will not be liable for services performed after the effective date of termination. ICLEF shall be compensated for services herein provided but in no case shall total payment made to ICLEF exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

**22. Registration with the Secretary of State of Indiana.** ICLEF certifies that it is registered with the Indiana Secretary of State to do business in the State of Indiana.

**23. Waiver of Rights.** No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

#### **Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that he/she is the authorized officer or employee of ICLEF, that he/she has not, nor has any other officer or employee of ICLEF, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

In Witness Whereof, ICLEF and the OAG of Indiana have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the foregoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

**Indiana Continuing Legal Education  
Forum, Inc.**

By: [Signature]  
Printed Name: W. N. Kamecke, Thomas  
Title: Executive Director  
Date: 2/24/03

**Approved by:  
Department of Administration**

By: [Signature]  
David Perlini, Commissioner  
Date: 3/5/03

**Office of the Indiana Attorney  
General**

By: [Signature]  
Printed Name: Larry Hopkins  
Title: CEO  
Date: 2-28-03

**Approved by:  
State Budget Agency**

By: [Signature]  
Marilyn Schultz, Director  
Date: 3-7-03

**Approved as to form and legality:  
Office of the Attorney General**

By: [Signature]  
Stephen Carter, Attorney General  
Date: March 10, 2003

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## Exhibit A

This Agreement and the pricing provided pursuant to this Agreement does not apply to the following ICLEF programs:

"Satellite" seminars relayed to ICLEF from remote locations.  
The live presentation of the annual *Indiana Law Update* (although this may be made available for video replay at the OAG's facilities at a later date)  
Out-of-country seminars

ICLEF will accept course registration applications from employees of the OAG taking advantage of the pricing provided pursuant to this Agreement on the same basis as it accepts applications from other persons taking ICLEF courses, as follows:

1. Each course registration application shall be satisfactorily completed and sent by the employee to ICLEF accompanied by the employee's check, credit card information, or other acceptable payment for the employee's portion of the cost.
2. The OAG employee shall pay ICLEF \$4.00 per CLE credit hour for courses of less than four (4) hours, and \$3.33 per CLE credit hour for courses of four (4) hours or more.
3. The OAG shall pay ICLEF \$13.88 per CLE credit hour for each course attended by an employee except for courses which have reduced attendance and increased fee requirements (including, but not limited to, the Mediation Program and the Indiana Trial Advocacy College). For such courses, the OAG shall pay ICLEF \$100 per attendee, and the attendee shall pay \$100 (for a total of \$200 per course), and no more than six (6) OAG employees taking advantage of the special pricing offered under this Agreement shall be accepted for registration at any one course. ICLEF shall use reasonable efforts to notify the OAG of such restricted courses so that the OAG can tell its employees in advance that special pricing will not be available to them.
4. Pricing for courses conducted by hired presenters will be negotiated on a case-by-case basis.

In consideration for the special pricing offered pursuant to this Agreement, the OAG commits to paying for a minimum of 1,000 hours of CLE credit during the term of this Agreement, and a maximum per-year of 1,400 hours CLE credit hours per year.

ICLEF shall submit monthly invoices to the OAG showing the name of the employee and the program attended. Payment shall be within 7 days after receipt and verification

by the OAG. The parties shall reconcile the services provided not less than twice a year.

The OAG will provide ICLEF with a list of eligible employees and will update the same on an as-needed basis. It is understood that the OAG employees taking advantage of this Agreement will primarily be Deputy Attorneys General. However, the OAG and ICLEF may agree in advance to permit paralegals to attend selected programs.